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8 UNITED STATES BANKRUPTCY COURT
9 WESTERN DISTRICT OF WASHINGTON
10 TACOMA DIVISION

11 In re:

12 Richard Brudis Ferguson Jr

13 Debtor,
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Case No. 14-46461-BDL

Chapter 13

RESPONSE TO OBJECTION TO CLAIM

15
16 Wells Fargo Financial Washington 1, Inc., its assignees and/or successors, ("Secured Creditor")
17 responds to Debtor's Objection to Claim as follows:

18 **FACTUAL BACKGROUND**

19 On or about March 15, 2004, Debtor executed a Note and Deed of Trust in the amount of
20 \$202,122.68 securing the property located at 820 6th Avenue, Tacoma, WA 98405 ("subject
21 property).

22 On December 8, 2014, Debtor filed a Chapter 13 bankruptcy case, 14-46461-BDL.
23 The subject Objection to Claim having been filed on February 9, 2015.

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29 Response to Objection - 1
MH # WA-14-109684

McCarthy & Holthus, LLP
108 1st Avenue South, Ste. 300
Seattle, WA 98104
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ARUGMENT

**A. THE PROOF OF CLAIM IS PROPER - DEBTOR FAILED TO PROVIDE
EVIDENCE TO REBUT THE PRESUMPTION THAT THE PROOF OF
CLAIM IS VALID**

Unless an objection is filed, a timely filed proof of claim is deemed allowed. See 11 USC §502(a); *In re G.I. Indus., Inc.* (9th Cir. 2000) 204 F3d 1276, 1280. If a proof of claim is filed using the appropriate form, executed under penalty of perjury, and filed with the bankruptcy court, it is prima facie evidence of the legitimacy and sum of the claim. See Federal Rule of Bankruptcy Procedure Rule 3001(f); *In re Southern Calif. Plastics, Inc.* (9th Cir. 1999) 165 F3d 1243, 1247-1248. To overcome the presumption that the claim is valid and correct, debtor must provide evidence to the contrary which creates a triable issue of fact. See *In re G.I. Indus., Inc.* (9th Cir. 2000) 204 F3d 1276, 1280; *In re Medina* (9th Cir. BAP 1996) 2005 BR 216, 222; *In re Hemingway Transport, Inc.* (1st Cir. 1993) 996 F2d 915, 215; and *In re Gran* (8th Cir. 1992) 964 F.2d 822, 827.

In the current matter, Debtor submits an objection to claim stating that the claim includes escrow shortage or deficiency of \$20,865.75 without itemization of these charges. However, attached to the Proof of Claim is Secured Creditor's escrow analysis. As such, the Debtor has not overcome the presumption that the proof of claim is valid, and the Objection to Claim should be denied.

1 **CONCLUSION**

2 Debtor has not presented any evidence to refute the presumption that the Proof of Claim
3 is valid. Therefore, the Objection to Claim should be denied.
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6 Dated: 3/5/15

McCarthy & Holthus, LLP

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8 By: /s/ Annette E. Cook
9 Annette E. Cook, Esq. WSBA#31450
10 Attorney for Secured Creditor
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29 Response to Objection - 3
MH # WA-14-109684

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Seattle, WA 98104
206-319-9100

CERTIFICATE OF SERVICE

On 3/5/2015, I served the foregoing **RESPONSE TO OBJECTION** on the following individuals by electronic means through the Court's ECF program

TRUSTEE

David M Howe
ecfcomputer@chapter13tacoma.org

DEBTOR(S) COUNSEL

James F Dart
jdart@shoedartlaw.com

SPECIAL NOTICE

Kathleen V Shoemaker
kshoemaker@shoedartlaw.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Amy Shaw

Amy Shaw

On 3/5/2015, I served the foregoing **RESPONSE TO OBJECTION** on the following individuals by depositing true copies thereof in the United States mail at San Diego, California, enclosed in a sealed envelope, with postage paid, addressed as follows:

DEBTOR

Richard Brudis Ferguson Jr, 1304 19th St. Ct. NW, Gig Harbor, WA 98335

US TRUSTEE

700 Stewart St Ste 5103, Seattle, WA 98101

SPECIAL NOTICE(S)

Columbia State Bank, Columbia State Bank, c/o Todd M. Blodgett, 1201 Pacific Ave #1200, Tacoma, WA 98402

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: 3/5/2015

/s/ Christian Aguilar

Christian Aguilar